

REMARKS/ARGUMENTS

Reconsideration and withdrawal of the outstanding grounds of rejection are respectfully requested in light of the above amendments and remarks that follow.

The Examiner has rejected claims 1-3 and 15-17 under 35 U.S.C. § 102(b) as anticipated by Marcus.

In relying on Marcus, the Examiner notes particularly the “rigid, elongated tubular element 30” as providing response for the “structural elements required by independent claims 1 and 15.

In order to more clearly distinguish the claimed subject matter over the prior art, applicant has amended claim 1 to require an existing substantially rigid structural tubular elements that at least in part define a space to be cooled and that have primary functions unrelated to transport of cooling liquid, at least one of the structural tubular elements containing a substantially liquid tight passage, in further combination with method steps a) and b) which have also been amended in minor respects for the sake of claim consistency.

In contrast, the tubular elements 30 in Marcus comprise part of a portable solar-powered misting apparatus that is used on the vessel. Note in this regard the disclosure in column 3, lines 1-10, which read

As further shown in FIG. 1, the apparatus 10 is depicted in use on a boat or water craft 32, the wand assembly 30 having a spaced plurality of nozzles 34 for misting an environment space 36 to be occupied by users of the water craft 32. The water craft 32, which forms no part of the present invention, has an elevated life-line or other structure 38 to which the wand assembly 30 is supportively mounted by a plurality of straps 40, the straps 40 having hook-loop (Velcro®) fasteners for securing the straps 40 in a closed loop configuration.

The Examiner's attention is also directed to Figure 4 which clearly indicates the portability of the apparatus as well as related text in column 4 of the patent. From this disclosure, it is clear that tubular elements 30 are not part of an existing structural configuration on the vessel but rather, the display wand assembly 30 is designed to be attached to the vessel in the manner shown in Figure 1. Of course, this arrangement is the very antithesis of the subject invention which seeks to essentially conceal the system within existing structural supports on the vessel. Moreover, from the disclosure in Marcus, it is clear that the primary function of the elements 30 is in fact the transport of cooling liquid in direct contradistinction to the requirements of claim 1.

The subject matter of dependent claims 2 and 3 further define the structural elements in terms of specific vessel components, and the arrangement in these claims is also nowhere disclosed in Marcus.

With respect to independent claim 15, that claim requires a substantially rigid tubular element, a primary function of which is to structurally define at least a portion of the space to be cooled but which is also capable of transporting liquid to be misted through a substantially water tight passage in the element. For essentially the same reasons as presented above, it is clear that the spray wand assembly 30 in Marcus does not have a primary function to structurally define at least a portion of the space to be cooled. Rather, the sole function of the spray wand assembly in Marcus is to supply water to the misting nozzles 34.

Dependent claims 16 and 17 are also neither disclosed nor suggested in Marcus.

For the above reasons, it is respectfully requested that the anticipation rejection of claims 1-3 and 15-17 be withdrawn.

The Examiner has also rejected claims 4, 5, 8, 9-12 and 14 under 35 U.S.C. § 103 as unpatentable over Marcus in view of Kennedy. Kennedy is cited for its disclosure of supplying fresh water at a pressure between about 200 to 1000 psi and providing mist made up of water droplets having cross-sectional dimensions of between 5 and 100 microns.

The secondary reference to Kennedy merely discloses specific nozzle configurations per se and does not in any way remedy the deficiencies of Marcus in terms of the requirements of independent claim 1, from which claims 4, 5 and 8 depend. Accordingly, the Section 103 rejection of claims 4, 5 and 8 should now also be withdrawn.

Independent claim 9 has been amended to require that the structural elements through which the fresh water is supplied have a primary function unrelated to the supply of water. Hereagain, the combination of Marcus and Kennedy neither discloses nor suggests such an arrangement, referring again to the arguments presented above with respect to independent claim 1.

The Examiner has rejected claims 18 and 19 under 35 U.S.C. 103 as unpatentable over Marcus in view of Terrell et al.

In so far as claims 18 and 19 depend from claim 15, and since the combination of Marcus and Terrell is insufficient to evidence the obviousness of independent claim 15, claims 18 and 19 are clearly patentable over the cited prior art.

The Examiner has rejected claims 25 and 26 under 35 U.S.C. § 103 as unpatentable over Kennedy in view of Elston. By this Amendment, claims 25 and 26 have been canceled.

The Examiner notes that claims 27-30 are objected to but would be allowed if rewritten in independent form.

PAVLIK

Appl. No. 10/678,173

November 14, 2005

The Examiner has apparently overlooked the fact that claim 27 was in fact rewritten in independent form in the previous Amendment, and therefore, claims 27-30 are in condition for immediate allowance.

Finally, applicant has canceled the previously non-elected claims 6, 7, 13, 20-24 and 31.

Applicant requests entry of the Amendment pursuant to 37 C.F.R. § 1.116(b). The amendments to the claims were necessitated by the Examiner's reliance on newly cited prior art, and the amendment clearly places the application in condition for allowance.

Early passage to issue is requested. In the event, however, any small matters remain outstanding, the Examiner is encouraged to telephone the undersigned so that the prosecution of this application can be expeditiously concluded.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By:



Michael J. Keenan
Reg. No. 32,106

MJK:rrl

901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100